REMARKS

STATUS OF THE CLAIMS

Claims 1-10 and 12-27 were pending and were subject to restriction. By amendment herein, claim 1 has been canceled, without prejudice or disclaimer. Claim 2 has been amended to incorporate the limitations of previous claim 4, which has been canceled, without prejudice or disclaimer. Claim 8, 15-18 and 25 have been amended for proper antecedent basis. Thus, claims 2, 3, 5-10 and 12-27 are pending as shown above.

RESTRICTION

The previously pending claims were subject to restriction as between 6 allegedly distinct Groups. (Restriction Requirement, page 2). In support of the Restriction Requirement, it was alleged that there is no single general inventive concept under PCT Rule 13.1 and Rule 13.2 because NCBI Accession No. Q8YAQ1 discloses the sequence of the protein of claim 1.

As correctly noted by the Examiner, the subject application is a National Phase filing of PCT/IB2004/001440, filed under 35 U.S.C. § 371. Accordingly, questions of unity must be resolved using the criteria of Rule 13 of the Patent Cooperation Treaty (P.C.T.). Pursuant to Rule 13.2 and 37 C.F.R. § 1.475(a), the special technical feature must define a feature that makes a contribution, as a whole, over the prior art.

The claims as amended are drawn to compositions and methods involving a polypeptide as shown in SEQ ID NO:1 with mutations such that the protein exhibits reduced or eliminated toxicity. Therefore, Applicants submit that unity of invention is present because the proteins and methods using these proteins as now claimed are not present in NCBI Accession No. Q8YAQ1. In particular, the sequence disclosed in NCBI Accession No. Q8YAQ1 is the wild-type sequence with wild-type toxicity. As such, all of the claims share a special technical feature not taught or suggested by the prior art and unity of invention is present.

Solely to comply with requirement of 37 C.F.R. § 1.143, Applicants elect Group I, with traverse.

Applicants expressly reserve their right under 35 USC § 121 to file one or more divisional applications directed to the nonelected subject matter during the pendency of this application. Furthermore, should the Examiner instead choose to make this restriction requirement final, Applicants reserve their right, pursuant to 37 C.F.R. §§ 1.144 and 1.181, to petition this requirement at any time during the pendency of this application, prior to appeal. Furthermore, as noted on pages 3-4 Restriction Requirement, Applicants retain the right of rejoinder.

Please direct all further communications regarding this application to:

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